

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/28/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000679

FILED: _____

CHRISTOPHER J DECK

MICHAEL H LEE

v.

STATE OF ARIZONA

GERALD R GRANT

DISPOSITION CLERK-CSC
REMAND DESK CR-CCC
TEMPE JUSTICE CT-WEST

MINUTE ENTRY

WEST TEMPE JUSTICE COURT

Cit. No. CR01W-1081FE

Charge: BURGLARY IN THE THIRD DEGREE, CLASS 4 FELONY

DOB: 04/23/80

DOC: 12/24/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the

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West Tempe Justice Court, Appellant's Opening Memorandum, and the written record from the West Tempe Justice Court. Appellee has chosen not to file a memorandum in this case.

The only issue presented for review by this court is whether the trial judge (Judge Pro Tem Parker) erred in dismissing the complaint with prejudice. Citing Rule 5.4, Arizona Rules of Criminal Procedure, Appellant argues that a Justice of the Peace lacks jurisdiction to dismiss a criminal complaint with prejudice at the preliminary hearing stage of a criminal prosecution. More importantly, Appellant argues that A.R.S. Section 22-301 limits the authority and jurisdiction of the Justice of the Peace Courts in felony prosecutions. That statute specifically provides that the jurisdiction of the Justice of the Peace Court extends:

...only for the purpose of commencing action and conducting proceedings through preliminary examinations and holding the Defendant to answer to the Superior Court or to discharge the Defendant if it appears that there is not probable cause to believe that the Defendant is guilty of an offense.¹

Rule 16.6, Arizona Rules of Criminal Procedure provides in subsection D:

Dismissal of a prosecution shall be without prejudice to commencement of another prosecution, unless the court order finds that the interests of justice require that the dismissal be with prejudice.

In the instant case, the Justice of the Peace Court is without authority and jurisdiction to enter an order of dismissal with prejudice, as required by Rule 16.6, Arizona Rules of Procedure, as the Justice of the Peace Court lacks

¹ A.R.S. Section 22-301.
Docket Code 512

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authority to make findings that the interests of justice require the dismissal be with prejudice. The Justice Court's authority over felony matters is limited by A.R.S. Section 22-301 to holding a Defendant to answer in the Superior Court, or discharging the Defendant if it appears there is not probable cause to believe the Defendant is guilty of an offense. Clearly, the lower court exceeded its authority in ordering that the dismissal of the charge in this case be with prejudice.

IT IS THEREFORE ORDERED reversing the order of the West Tempe Justice Court dismissing this case with prejudice.

IT IS FURTHER ORDERED remanding this matter back to the West Tempe Justice Court with instructions to vacate its previous order of a dismissal with prejudice and to dismiss this matter without prejudice.

Date: May 28, 2002

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT